



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

March 31, 2003

Ms. Rebecca E. Kane  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance, MC 2222A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Ms. Kane:

RE: NOTICE OF AVAILABILITY OF ENFORCEMENT AND COMPLIANCE HISTORY  
ONLINE WEB SITE FOR 60-DAY COMMENT PERIOD, 67 FED REG 70079 (NOV. 20,  
2002)

As both (1) a part of the regulated community and the nation's largest public power provider with numerous fossil fueled, nuclear fueled, hydro power, transmission and power supply, and other facilities that are regulated under the Clean Air, Clean Water, and Resource Conservation Recovery Acts, and (2) a federal agency with resource stewardship responsibilities, the Tennessee Valley Authority (TVA) places great emphasis and value on the environmental performance of its facilities. Because of its commitments to numerous stakeholders and its own position under the TVA Act as a public utility and resource development agency, TVA supports its compliance record being made available to the public--but with guarded caution. TVA appreciates the opportunity to review and comment on EPA's pilot web site, Enforcement and Compliance History Online (ECHO), and offers the following response to EPA's solicitation of information on the usability of the web site as well as the accuracy of its data. The first section of these comments responds to the first four questions of the *Federal Register* notice concerning the value and usability of the ECHO web site. The second section of these comments responds to the two questions EPA directed specifically to members of the regulated community. The third section provides general comments and recommendations about the ECHO site. As requested, question numbers corresponding to the *Federal Register* notice request are included with our comments.

**Section I. EPA Generic Questions Concerning Value and Usability of the Web Site**  
**[FR Notice Questions 1-4]**

**(1) Does the site provide meaningful and useful information about the compliance and enforcement program?**

The Office of Management and Budget "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," 67 Fed. Reg. 8452 (Feb. 22, 2002), states, "[T]he fact that the Internet

enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also *increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines*" (emphasis added). As illustrated by the comments that follow, ECHO fails to meet the standard of providing accurate information and, therefore, poses a considerable risk to the regulated community, and to the states. Having errors in a public compliance database lends itself to regulators being perceived as not meeting their responsibilities under the statutes of environmental law and permittees being first "presumed guilty" of noncompliance in the court of public opinion and then only afterward being allowed to make corrections that may or may not attract the same attention. Also, third-party litigation over perceived violations of the Clean Water Act oftentimes is against both the permit holder and the regulating authority. TVA, as a part of the regulated community and also a steward of the Tennessee Valley's natural resources, places great emphasis and value on complying with environmental regulations. TVA supports EPA's efforts to provide accurate and appropriate information regarding its compliance and enforcement status; however, because of misinformation that is in this database and the inaccurate "snap shot" of environmental performance that is currently portrayed by the ECHO web site, TVA believes that, unless significant improvements can be made, the risks of ECHO remaining in the public domain currently far outweigh any useful value.

**(2) Is the site easy to navigate?**

1. While EPA's ECHO web site is easy to navigate, to understand the data and reporting process requires navigating between at least six links that, when all printed, generate approximately 50 pages of supporting documentation.
2. Locating facilities on the web site can be problematic. The database seems to be in a state of daily flux. Searching for "TVA" facilities, including minor facilities, identified 63 facilities on 2/10/03 and 77 on 3/19/03. Differing results were obtained on 3/19/03 when "TVA" is used for the search (77 facilities) versus "Tennessee Valley Authority" (24 facilities). A number of facilities that appeared on the shorter list were not identified in the more extensive list.

**(3) Does the help text adequately explain the data?**

One commenter reported that the web site is difficult to understand as to what is in compliance and what is out of compliance. Also, it is not immediately obvious where certain types of information on the web site are located. Although a site map option is available on the Home Page, the site map page itself is very rudimentary, and the relationship between the supporting information listed is confusing and not immediately obvious. Better links between the "support" documentations would be helpful. The Facility Report page only links to the Data Dictionary and there are no links within the Data Dictionary to the other information needed to fully understand the report.

**(4) What additional features, content, and/or modifications would improve the site?**

1. Review of the database by permittees prior to posting of information to the public would improve the accuracy and usefulness of the site. At the very least the ECHO database should track the errors that have been reported and corrected (or rejected) and present a summary of this data to web site users. This would improve the objectivity of the site.
2. ECHO should include a system to flag information for which error correction reports have been submitted but not resolved. This would allow web site users the advantage of easily recognizing compliance and enforcement information that is being contested by the regulated community. The site should also contain an embedded disclaimer making it clear to the users that the information is not always accurate. The disclaimer should be included on the Facility Report page and have a link to the About The Data page, which includes a section on "Known Data Problems." There also should be a time limit imposed for correcting inaccurate information by EPA (not by permittees).
3. In our opinion, EPA should have a QA/QC staff or activity to ensure that the information on the web site is reported as submitted to the regulatory agency (i.e., catching data entry or other errors should not be the responsibility of the regulated community). Even if all the errors contained on the ECHO web site during this initial review and comment period could be located and corrected, unless the problem of inaccurate information transfer along the entire pathway from the submitted DMR, to entry into the PCS by the state, to being incorporated into the federal database, is fixed, the need for constant data quality control before information is added to the web site will be required. Inconsistencies between the way data are entered into the PCS and interpretation of this data by the federal database should be resolved (e.g., interpretation of "<" values submitted by the permittee on DMR forms as opposed to a requirement in the federal database for reporting such values as "NODI=B" - See Comment (5).A.2 under Section II, below).

**Section II. Issues Directed to the Regulated Community [FR Notice Questions (5)A and (5)B]**

TVA Business Units affected by the web site accessed ECHO for some of their facilities, inspected the enforcement and compliance data for accuracy, and generated numerous data error correction reports. Following are our observations and comments in response to questions directed to the regulated community.

**(5)A. Are the facility reports accurate?**

Numerous errors and inconsistencies were noted in ECHO for the variety of facilities that was reviewed.

1. TVA's **Fossil Power Group** observed the following:

- There were a total of twenty error correction reports filed online for the air and water media, in addition to a multitude of questions sent to the ECHO staff regarding clarification on items. In the water area alone, there were 11 errors found and reported for eight of the twelve fossil facilities reviewed. This represents an error rate of 67% for the number of facilities having errors. Three sites had two errors each, and five sites had one error each.
- If a state is remiss in entering DMR data into EPA's PCS database, the permittee is listed as being in "significant noncompliance" for failure to submit a DMR. This results in facilities being held accountable (and liable) for issues created by the states. In this case, the ECHO web site becomes an indicator of the data entry backlog at the state level and not an indicator of the permittee's compliance status.
- If a facility is late within a monthly reporting period submitting a DMR to the state, ECHO indicates a significant noncompliance (SNC) for non-receipt of DMR. However, in both EPA's guidance and the ECHO Data Dictionary, a designation of SNC should only apply if a DMR is more than 30 days late.
- One facility received an "automatic" Notice of Violation from the state for failure to submit a flow value on a DMR. The DMR was corrected and resubmitted, and the matter was considered closed by the state. ECHO, however, indicated that there was an enforcement action with the requirements of the action being completed in subsequent months. This is not the case.
- A Compliance Status report in ECHO showed another facility had violated a pH limit by 90%. Given the actual permit limits of 6.0 to 9.0, an excursion this large would require that the data reported be outside the range of plausible pH values (i.e., values would have to have been either 0.6 or 17). A review of the applicable DMR submittal and the "program data system" form which ECHO derives its information (PCS for CWA/NPDES) revealed that the DMR contained a value of 7.6 but a value of .6 was erroneously entered into PCS by the state, creating an error that was beyond TVA's control or knowledge.
- Three TVA facilities were identified as "remaining in significant noncompliance" on the basis of a disputed order issued by EPA Region 4. On November 3, 1999, the Regional Administrator for EPA Region 4 issued TVA a unilateral compliance order under Sections 167 and 113 of the Clean Air Act. In this order, these facilities were identified as in violation of the Clean Air Act's new source review requirements. TVA disputed and continues to dispute the basis for this order. On August 17, 2000, the U.S. Court of Appeals for the Eleventh Circuit granted TVA's request to stay the order. EPA's motion to dismiss TVA's petition before

the Eleventh Circuit was not granted, but rather was carried forward with the case. TVA currently is awaiting a decision from the Eleventh Circuit Court on the merits of the case. THE ECHO designation for these facilities as "remaining in significant noncompliance" is premature and TVA expects that ultimately none of the facilities will be determined to be in noncompliance.

- There was only one facility that had RCRA data listed (other than the Inspection History) and the data for that facility was correct.
2. Review of the ECHO site by TVA **nuclear facilities** also indicated errors which included:
- One facility had three quarters identified as "N [Rpt. Viol]" and one as "R [Resolved]" for its CWA/NPDES compliance, where there were no compliance issues during those quarters. Also, a toxicity noncompliance that occurred during one quarter also showed up in the subsequent quarter where no toxicity noncompliance occurred. There was an additional quarter noted on the ECHO site as being in violation due to not submitting DMRs and other paperwork. The DMRs had been submitted and received by the state as indicated through certified mail receipts. No paperwork was missing or late. Finally, the facility was shown to have had a chlorine violation at two outfalls during one quarter where no violations had occurred, bringing into question the convention of reporting and entering analytical results that are less than detection. The NPDES permits for some states mandate a numeric value be entered on DMR forms, e.g., <0.02. This requirement is spelled out explicitly in each permit and nowhere in the permit is the use of "NODI" codes mentioned. States accept such values and enter the data into the PCS database. The federal database evidently requires a "NODI=B" for values measured below detection and reports values that are entered into the PCS with a "<" symbol as the quantified amount. Because the permit limit for chlorine at this facility is at the detection level, this inconsistency resulted in the facility being listed in significant noncompliance, where in fact no limit was exceeded. Apparently a new staff person entering data into the PCS for the state was not aware of this convention, resulting in the facility being listed as having a significant effluent violation, when in fact it did not.
  - Another facility made an online correction where CWA/NPDES violations were indicated during two quarters at the Facility Level Status, where no violations had occurred.
3. Review of the ECHO site by TVA's **Transmission and Power Supply Business Unit** resulted in:
- Three online error reports to correct the names, addresses, and owner of facilities.

- Discovery of one 500-kV substation that was shown as a Large Quantity Generator (LQG) that is currently a Conditionally Exempt Small Quantity Generator (CESQG). There was no graphic under the Facility Characteristic portion of the table to request this correction.
- One online error report where there was an inspection record indication for the date of 12/6/02 at a facility where a Notice of Termination (NOT) had been sent (on 4/8/99) to the state (and received) 33 months earlier. The data correction response from EPA indicated a likely typographical error for an inspection that was done at another facility with a similar permit number and that the state's data manager would be notified "in the hope that she can ascertain the correct permit number." This was classified as a "Future Correction," and TVA was asked to provide paperwork substantiating the NOT submittal.

4. TVA's **Resource Stewardship** organization observed:

- There is no consistency in the naming of facilities. For example, the several hydro plants on the same river are listed four different ways on the web site. It would be beneficial if the web site were to use a standard naming system for all facilities. Also, the name of at least one TVA facility was misspelled on the Web Site.

5. Review of the ECHO site by TVA's **Reservoir Operations BU** for a sub-set of their hydropower facilities indicated:

- The "Facility Contact Person," or "Cognizant Official," and phone numbers listed on ECHO are not correct and do not agree with the field definition. For example, the organization's Senior Vice President (SVP) is listed in the field for the Cognizant Official, which is defined as the name and/or department of the permittee's representative responsible for completing Discharge Monitoring Reports (DMR). The SVP is not the person who completes the DMRs. Even in this incorrect listing, the phone number was in error. Some of this confusion may be attributed to the various media permit applications submitted by the permittee, however designation of the "Cognizant Official" in some cases appear to have been entered based on supposition.

**(5).B If you did need to submit an online error report, was the error reporting process easy to use?**

1. Apart from the instance where there was not a graphic to request the correction where a LQG should have been designated as a CESQG (See second bullet under Item No. 3 above), the error reporting process was easy to use.

2. Following the online error reporting process, the system for correcting errors is initially responsive during this test phase. Follow-up emails have been received within one day in some cases. However, it remains to be proven if this will be the case under routine operations and for more complex corrections.
3. Though initially responsive, the actual process for correcting reported errors appears to be convoluted, cumbersome, time consuming (burdensome), and maybe not even possible in some instances. Feedback from this process has not been satisfactory, as in the following instance:
  - TVA, on several occasions, was asked to locate and submit information (i.e., a Notice of Termination, DMRs, and other data) as part of the error correction process. As part of the CWA/NPDES error correction process for one facility, an email from the EPA Region 4 PCS manager to [ErrorTracker@sdm-moses.com](mailto:ErrorTracker@sdm-moses.com) responded that: *"this facility's effluent data had a great number of missing data points. The reporter should contact the state to determine the cause for these problems and perhaps revise their reporting procedures"* [Emphasis added]. In a related email from the federal PCS manager directly to the affected facility, a list of the missing DMR data since October 2000 was to be provided and a request was made for the facility to provide EPA a copy of the data. TVA submits complete and accurate DMRs to the states and should not be responsible for how data are entered, or not entered, into the PCS database, or responsible for submitting its compliance data directly to EPA. Also, TVA does not have any control over the states' reporting procedures.
4. Although the actual error process is fairly easy to use and EPA responded promptly to the reports, significant time was spent in some cases "going back and forth" before resolution could be reached. When TVA staff was not in active dialogue with EPA pertaining to an error, extensive amounts of time were devoted to reviewing and verifying information. In addition:
  - Sometimes the specific compliance issue is not always apparent and in some cases it becomes necessary to review the PCS database (the PCS information for TVA's Widows Creek Fossil Facility alone, for example, is 192 pages), refer to the data dictionary, and then compare the information in the PCS to the actual DMR submission in order to determine what the alleged noncompliance is and whether it is actually valid.
  - The compliance status is shown for the reporting date which may be significantly different than the actual date of noncompliance. This complicates tracking down the source of the supposed error.
  - Some errors cannot be corrected because the problem is within the source database (e.g., PCS). For example, if a state is slow in entering DMR data into EPA's database, the permittee is listed as being in

“significant noncompliance” for failure to submit a DMR. The correction process for ECHO does not address this problem.

5. TVA questions the overall long-term effectiveness of the error correction process in some instances. If errant information in the ECHO web site comes from state permitting programs, correcting the errors contained in the federal database will not always correct the source (state) database if entry problems exist. If the state source database and data entry process are not corrected as a result of correcting the federal database, the same errors will reoccur each time ECHO pulls information from the state’s program.

### **Section III. General Comments and Recommendations**

1. Placing incorrect compliance and enforcement information into the public domain not only poses an unacceptable risk of third-party litigation to the permittee, but also to the regulating authority. This risk is unacceptable not only because of fiscal consequences, but also because it misshapes public opinion. This is particularly troublesome for an agency such as TVA, or a state, with accountabilities to stakeholders for protecting the environment.
2. With regards to correcting errors, there needs to be a mechanism to ensure that corrections are legitimate. Apparently, anyone can submit an error correction to the data base administrator, and there is not a document publicly available describing the system to confirm that the correction should be made. Only members of the regulated community should have the option of making online data error reports for information on their permitted facilities.
3. It appears that the regulated community is being placed in the position of maintaining the quality and accuracy of information included on EPA’s web site. This is not suitable because it will always be “after the fact” and because the regulated community cannot control how data are entered into PCS or translated by the ECHO source database. This is not a fair or appropriate burden to place on the permittee, especially in light of the very intensive QA/QC employed by TVA to ensure all sample collection, analytical, and reporting functions are conducted so that the accuracy and completeness of all information submitted to a regulator is certified.
4. For federal facilities, there are two web sites for reviewing compliance information online, ECHO and the Environmental Compliance Status Report (ECSR), and both sites apparently utilize the same source databases. One difference between the two sites appears to be the search options for locating information. TVA recommends that the two sites be combined into one, using the best search functions of both.
5. In light of Homeland Security Issues, TVA strongly objects to providing easy public access to mapping capabilities, longitude and latitude coordinates, and extensive demographic information, such as population densities, about each facility. By means of the Internet, world-wide access to this sensitive information is readily available, placing certain facilities at a greater terrorism risk.



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6. It is TVA's overall conclusion and recommendation that, unless and until significant revisions are made to ensure the accuracy of information and to preserve the sensitive security data available on the site consistent with our nation's homeland security efforts, ECHO is not an appropriate information tool and public access to the web site should be discontinued. TVA supports EPA's efforts to disseminate accurate information and believes that such dissemination is appropriate when it meets federal data quality guidelines and helps further the Agency's goals for protecting the environment. TVA also supports and encourages public accessibility to accurate environmental compliance records as evidence of its commitment to the environmental protection and stewardship of natural resources. Therefore, TVA believes the ECHO web site must be shut down until it can be reworked to ensure that errors do not appear on the site and that they are "flagged" and corrected quickly if spotted.

Again, TVA appreciates the opportunity to review and comment on the accuracy, functionality, and appropriateness of EPA's pilot web site. If you have comments or questions regarding these comments, please call or e-mail Don Wade of my staff at (423) 751-6519; [dcwade@tva.gov](mailto:dcwade@tva.gov), or me at (423) 751-3742; [jwshipp@tva.gov](mailto:jwshipp@tva.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Shipp, Jr.", with a stylized, cursive script.

John W. Shipp, Jr., P.E.  
General Manager  
Environmental Policy and Planning